

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000284-001 DT

03/31/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

KENNETH M FLINT

v.

ANTONY DEAN WERSTLER (001)

ALAN H ZIMMERMAN

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #1523203

Charge: 2) DUI W/BAC OF .08 OR MORE

DOB: 06/30/70

DOC: 08/10/02

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of oral argument on February 4, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Scottsdale City Court, and the excellent memoranda submitted by counsel.

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In this case Appellant, Antony Dean Werstler, appeals from his conviction of Driving with a Blood Alcohol Content of .08 or Greater in violation of A.R.S. Section 28-1381(A)(2), a class 1 misdemeanor. The only issue raised by Appellant on appeal is his contention that the trial judge erred in denying his Motion in Limine that sought to preclude Appellant's admissions of driving on the basis of an alleged lack of *corpus delicti*. On March 10, 2003, the trial judge denied Appellant's Motion in Limine finding that proof of *corpus delicti* is not required as to statements by a criminal defendant that he or she was driving a vehicle involved in an accident resulting in injury or death to any person pursuant to A.R.S. Section 28-1388(G). Thereafter, the parties submitted the matter to the court on stipulated facts and Appellant was found guilty of the charge. Appellant has filed a timely Notice of Appeal in this case.

Appellant contends that Arizona case law requiring *corpus delicti* as a prerequisite to the admission of a criminal defendant's statements precludes evidence of Appellant's admissions in this case that he was driving. Appellant argues that no *corpus delicti* could be proven in this case, and further that A.R.S. Section 28-1388(G)¹ is unconstitutional. Appellant argues that this statute violates the separation of powers clause in the Arizona Constitution by encroaching upon the Arizona Supreme Court's rule-making authority. Appellant argues that Article VI, Section 5 of the Arizona Constitution grants rule-making powers exclusively to the courts.

This Court rejects Appellant's arguments that the legislature, through its passage of A.R.S. Section 28-1388(G), has encroached upon the Supreme Court's rule-making authority. This statute does not conflict with any specific rule of evidence, but rather creates a narrow exception to case law establishing the *corpus delicti* rule. It appears from a simple reading of the statute, that the statute only applies to statements by a criminal defendant that that defendant "was driving a vehicle that was involved in an accident resulting in injury to or death of any person". Further, the statute only applies in criminal proceedings. It would appear that the statute is crafted to address situations where the only other available witness to a criminal defendant's driving was rendered unavailable by death or injury. More importantly, the statute at issue does not overrule or engulf a general rule of admissibility.²

Having determined then that A.R.S. Section 28-1388(G) is constitutional, this Court further determines that the trial judge correctly applied that statute to the facts of this case. Here, the police arrived to discover two cars had been involved in an automobile collision and that one of the driver's of the car, Sarah Silver, was injured. Scottsdale Police Officer Anderson approached a small crowd of people standing near the accident and inquired who was driving the vehicles. Appellant stepped forward and admitted that he was driving one of the cars. This

¹ This statute was formerly A.R.S. Section 28-692(L), effective on June 28, 1990.

² See, In the matter of the appeal in Maricopa County Juvenile No. JS-501904, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994). See also, State v. Daugherty, 173 Ariz. 548, 845 P.2d 474 (App. 1993)(the Court of Appeals noted that "our own legislature has abolished the *corpus delicti* rule in automobile collision cases involving injury or death").

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admission was clearly relevant and admissible pursuant to A.R.S. Section 28-1388(G). This Court finds no error.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed by the Scottsdale City Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for all further and future proceedings, if any, in this case.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT